

1 HONORABLE RICHARD A. JONES
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BENSON MILLS, INC.,

11 Plaintiff,

12 v.

13 LESONG DENG,

14 Defendant.

15 Case No. 2:21-cv-01467-RAJ

16
17 **ORDER GRANTING MOTION
18 FOR DEFAULT JUDGMENT**

19 **I. INTRODUCTION**

20 This matter is before the Court on Plaintiff's motion for default judgment. Dkt. #
21 19. For the reasons below, the Court **GRANTS** the motion.

22 **II. BACKGROUND**

23 Plaintiff Benson Mills, Inc. ("Benson Mills") filed this action against Defendant
24 Lesong Deng in the United States District Court for the Western District of Washington
25 for copyright infringement, 17 U.S.C. §§ 101, et seq. Plaintiff alleges that Defendant
26 illegally marketed and sold tablecloths incorporating designs that are substantially similar
27 to those of Benson Mills' "Twinkle Web," "Harvest Legacy" and "Poinsettia Legacy"
28 copyrighted designs (the "Benson Mills' Works"). The Amended Complaint attaches
copies of registration certificates or printouts confirming the issuance of the same for the
Benson Mills Works. (Dkt. 5 ¶ 8.) The Amended Complaint alleges that Defendant has
filed over 40 fraudulent takedown notices with Amazon in the past year, falsely claiming

1 that Benson Mills' products infringed Defendant's supposed copyright. (Dkt. 5 ¶¶ 18, 22-
 2 27; Kolter Decl. ¶13.) Although Plaintiff has served Defendant, he has not appeared in this
 3 action. (Dkt. 13.)

4 III. LEGAL STANDARD

5 At the default judgment stage, the court presumes all well-pleaded factual
 6 allegations are true, except those related to damages. *TeleVideo Sys., Inc. v. Heidenthal*,
 7 826 F.2d 915, 917-18 (9th Cir. 1987); *see also Fair House. of Marin v. Combs*, 285 F.3d
 8 899, 906 (9th Cir. 2002). Although the entry of default judgment under Rule 55(b) is "an
 9 extreme measure," disfavored cases should be decided upon their merits whenever
 10 reasonably possible. *Cmtv. Dental Servs. v. Tani*, 282 F.3d 1164, 1170 (9th Cir. 2002);
 11 *also see Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1189 (9th Cir. 2009).

12 In addition, Federal Rule of Civil Procedure 55(b)(1) permits the court to enter
 13 default judgment when the plaintiff's claim "is for a sum certain or a sum that can be made
 14 certain by computation." Fed. R. Civ. P. 55(b)(1). In moving the court for default
 15 judgment, a plaintiff must submit evidence supporting the claims for a particular sum of
 16 damages. Fed. R. Civ. P. 55(b)(2)(B). If the plaintiff cannot prove that the sum it seeks is
 17 "a liquidated sum or capable of mathematical calculation," the court must hold a hearing
 18 or otherwise ensure that the damage award is appropriate, reasonable and demonstrated by
 19 evidence. *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th Cir. 1981); *see also Getty Images*
 20 (*US*), *Inc. v. Virtual Clinics*, 2014 WL 358412 (W.D. Wash. 2014). In determining
 21 damages, a court can rely on the declarations submitted by the plaintiff. *Dr. JKL Ltd. v.*
 22 *HPC IT Educ. Ctr.*, 749 F. Supp. 2d 1046 (N.D. Cal. 2010). Where there is evidence
 23 establishing a defendant's liability, the court has discretion, not an obligation, to enter a
 24 default judgment. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980); *see also Alan*
 25 *Neuman Productions, Inc. v. Albright*, 862 F.2d 1388, 1392 (9th Cir. 1988). Since deciding
 26 for or against default judgment is within the court's discretion, a defendant's default does
 27 not de facto entitle a plaintiff to a court-ordered judgment. *Curtis v. Illumination Arts, Inc.*,

1 33 F. Supp. 3d 1200, 1210–11 (W.D. Wash. 2014).

2 IV. DISCUSSION

3 A. Default Judgment

4 In exercising its discretion on a motion for default judgment, the Court considers
 5 the “*Eitel*” factors: (1) the substantive merits of plaintiff’s claims and the sufficiency of the
 6 claims raised in the complaint; (2) the possibility of prejudice to the plaintiff if relief is
 7 denied; (3) the sum of money at stake; (4) the possibility of a dispute concerning material
 8 facts and whether the default was due to excusable neglect; and (5) the strong policy
 9 favoring decisions on the merits when reasonably possible. *Eitel v. McCool*, 782 F.2d
 10 1470, 1471–72 (9th Cir. 1986). The substantive merits of the claims and the sufficiency
 11 of the Complaint are often analyzed together. *Curtis*, 33 F. Supp. 3d. at 1211.

12 1. Merit and sufficiency of allegations for copyright infringement

13 Plaintiff seeks relief under the Copyright Act for copyright infringement. To
 14 prevail on a copyright infringement claim, a plaintiff must establish (1) ownership of a
 15 valid copyright and (2) copying of constituent elements of the work that are original.
 16 *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 US 340 (1991). Once a default is
 17 entered against a party, all allegations other than damages are presumed to be true.
 18 *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977). Plaintiff’s
 19 allegation that Defendant’s infringement was willful is also taken as true. *See Derek*
 20 *Andrew, Inc. v. Poof Apparel Corp.*, 528 F.3d 696, 702 (9th Cir. 2008) (allegation of
 21 willfulness deemed admitted on default). Plaintiff’s complaint, the allegations of which
 22 must be taken as true, establishes these elements.

23 Plaintiff has valid and enforceable rights in the “Benson Mills Works,” registered
 24 with the United States Copyright Office, Reg. Nos. VA-223-779, VA-2-268-214, VA-2-
 25 267-724. Defendant has directly, indirectly and/or contributorily infringed Plaintiff’s
 26 rights by copying and distributing or permitting, facilitating and materially contributing
 27 to the infringement of Plaintiff’s exclusive rights under the Copyright Act as alleged in

1 the Amended Complaint, thereby causing Plaintiff economic harm. This infringement has
 2 been willful.

3 **2. Prejudice**

4 Turning to the issue of prejudice, the Court finds this too weighs in favor of
 5 default judgment. Although Defendant was properly served with Plaintiff's Complaint,
 6 he failed to plead or otherwise defend. As a result, Plaintiff's claim cannot move forward
 7 on the merits and their ability to obtain effective relief will be negatively impacted.

8 *Elektra Entm't Grp. Inc. v. Crawford*, 226 F.R.D. 388, 391 (C.D. Cal. 2005).

9 **3. Sum of money at stake**

10 Rather than monetary damages, Plaintiff seeks an injunction under 17 U.S.C. §
 11 502(a). That statute authorizes an injunction to "prevent or restrain infringement of a
 12 copyright." For the Court to grant a permanent injunction, a plaintiff must demonstrate
 13 that: (1) it has suffered irreparable injury; (2) the remedies available at law are inadequate;
 14 (3) a remedy in equity is warranted, considering the hardships imposed on the parties; and
 15 (4) a permanent injunction would not be contrary to the public interest. *See Reno Air*
 16 *Racing Assn v. McCord*, 452 F.3d 1126, 1137 n.11 (9th Cir. 2006). Generally, an injunction
 17 must be narrowly tailored to remedy only the specific harms shown by a plaintiff, rather
 18 than to enjoin all possible breaches of the law. *See Price v. City of Stockton*, 390 F.3d
 19 1105, 1117 (9th Cir. 2004).

20 Based on the allegations in the Complaint, Plaintiff has demonstrated that is entitled
 21 to permanent injunctive relief against Defendant. A plaintiff's loss of control over its
 22 business reputation due to a defendant's unauthorized use of its protected copyrights and
 23 trademarks during the pendency of an infringement action constitutes irreparable harm.
 24 *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc.*, 240 F.3d 832, 840 (9th
 25 Cir. 2001). Because Plaintiff has shown that Defendant's conduct is ongoing, and has not
 26 stopped even after receiving DMCA notices. Accordingly, the Court finds that Defendant
 27 has the ability to further violate Plaintiff's intellectual property. *See eBay Inc. v.*

1 *MercExchange, LLC*, 547 U.S. 388, 391 (2006). In addition, Benson Mills seeks a tailored
 2 injunction to enjoin Defendant from filing any notices or counter-notices under the DMCA
 3 asserting that any Benson Mills products incorporating designs previously registered by
 4 Benson Mills with the U.S. Copyright Office are violative of purported copyrights owned
 5 by Defendant.

6 Defendant by default has been found liable for infringement in the instant action
 7 and likely possess the means to continue infringement in the future, meeting the court's
 8 requirements for issuing such an injunction.

9 **4. Possibility of dispute as to material facts and excusable neglect**

10 In assessing this factor, courts examine whether a defendant would be able to
 11 dispute material facts if it had appeared in the lawsuit. *Elec. Frontier Found. v. Glob.*
 12 *Equity Mgmt. (SA) Pty Ltd.*, 290 F. Supp. 3d 923, 947 (N.D. Cal. 2017). Where a plaintiff
 13 has supported its claims with ample evidence, and defendant has made no attempt to
 14 challenge the accuracy of the allegations in the complaint, no factual disputes exist that
 15 preclude the entry of default judgment. *Curtis*, 33 F.Supp.3d 1200 at 1212 (citations and
 16 quotations omitted). Furthermore, there is no evidence that Defendant's default resulted
 17 from any excusable neglect. Because Defendant was served with the complaint and
 18 summons and failed to appear, the Court finds the "excusable neglect" factor cuts in
 19 favor of granting default. *Microsoft Corp. v. Lopez*, 2009 WL 959219 at *3 (W.D. Wash.
 20 Apr. 7, 2009) (finding no evidence of excusable neglect where the plaintiff made
 21 numerous attempts to notify the defendant of potential liability and substantial time had
 22 elapsed since the complaint was filed). Furthermore, there is greater public interest in
 23 protecting the rights of copyright owners than in allowing an infringer to continue using
 24 the trademarked and copyrighted materials. *Perfect 10 v. Amazon.com, Inc.*, 487 F.3d
 25 701 (9th Cir. 2001).

26 **5. Policy Favoring Decisions on the Merits**

27 This factor reflects the general principle that cases should be decided on their

1 merits when it is reasonably possible to do so. *Pena v. Seguros La Comercial, S.A.*, 770
 2 F.2d 811, 814 (9th Cir. 1985). Although this factor “almost always disfavors the entry of
 3 default judgment,” it is not dispositive. *Vawter v. Quality Loan Serv. Corp. of Wash.*,
 4 2011 WL 1584424, at *6 (W.D. Wash. Apr. 27, 2011); *see also Microsoft*, 2009 WL
 5 959219, at *3 (“[T]he mere existence of Fed.R.Civ.P. 55(b) indicates that this *Eitel* factor
 6 is not alone dispositive”). In this case, Defendant’s bad faith and willful defiance
 7 demonstrates that it is unlikely that Plaintiff’s claims can be resolved on their merits.

8 **6. Summary of *Eitel* Factors**

9 The *Eitel* factors support default judgment in this case. Plaintiff has no other
 10 recourse. The substantive claims have merit, and the complaint is sufficient.

11 **B. Attorney’s Fees**

12 17 U.S.C. § 505 provides for an award of reasonable attorney’s fees. *Frank Music*
 13 *Corp. v. Metro-Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1556 (9th Cir. 1989) (*citing*
 14 *McCulloch v. Albert E. Price, Inc.*, 823 F.2d 316, 323 (9th Cir. 1987)). District courts
 15 should consider the following nonexclusive factors in determining an award of attorney’s
 16 fees: (1) the degree of success obtained; (2) frivolousness; (3) motivation; (4) the
 17 objective unreasonableness of the losing party’s factual and legal arguments; and (5) the
 18 need, in particular circumstances, to advance considerations of compensation and
 19 deterrence. *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 614 (9th Cir. 2010); *see*
 20 *also Jackson v. Axton*, 25 F.3d 884, 890 (9th Cir. 1994); *Fogerty v. Fantasy, Inc.*, 510
 21 U.S. 517, 534 n. 19, 114 S. Ct. 1023, 1033 n. 19 (1994).

22 Plaintiff’s success is complete. The claims as deemed fully admitted are not
 23 frivolous. Plaintiff’s motivation is to enforce its rights. The position of Defendant is
 24 deemed objectively unreasonable given his failure to advance any factual or legal
 25 arguments against Plaintiff’s claims. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct.
 26 1979, 1988-1989 (2016). Additionally, there is an express intent of the statute for costs
 27 and fees for the infringement such as conducted by Defendant.

1 To determine attorney's fees, the Court uses the "lodestar" method which involves
2 multiplying the number of hours reasonably expended on the claim or motion by a
3 reasonable hourly rate. *See, e.g., Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1262 (9th
4 Cir. 1987). The Court finds the rates charged and the hours expended to be reasonable for
5 the hours worked in Exhibit 6 to the Kolter Declaration. *See Gates v. Deukmejian*, 987
6 F.2d 1392, 1397–98 (9th Cir. 1992). The Court will not award the additional fees not
7 included in Exhibit 6.

8 In sum, the Court awards Plaintiff \$18,496.07 in attorney fees and \$402 in costs.

9 **V. CONCLUSION**

10 For the reasons stated above, the Court **GRANTS** Plaintiff's motion for default
11 judgment. Dkt. # 19.

12 DATED this 23rd day of May, 2023.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



The Honorable Richard A. Jones
United States District Judge